

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE U. PADILLA, et al,	)	No. C 12-5117 JSW (PR)
	)	
Petitioner,	)	
	)	<b>ORDER OF DISMISSAL</b>
v.	)	
	)	
UNITED STATES	)	
GOVERNMENT, et al,	)	
	)	(Docket No. 3)
Respondents.	)	
	)	

Petitioner, a detainee at the Contra Costa County Jail, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion seeking leave to proceed *in forma pauperis*.

Although the petition is largely incomprehensible, it is apparent that Petitioner's claims do not involve the fact or duration of his confinement, hence are not the proper subject of a habeas action. *See Moran v. Sondalle*, 218 F.3d 647, 650-52 (7th Cir. 2000); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint).

A district court may construe a habeas petition attacking conditions of confinement as a civil rights action under 42 U.S.C. § 1983. *See Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). However, although the court may construe a habeas petition as a civil rights action, it is not required to do so. Since the *Wilwording* case was decided there have been significant changes in the law. For instance, the filing fee for a habeas petition

1 is five dollars, and if leave to proceed in forma pauperis is granted, the fee is forgiven.  
2 For civil rights cases, however, the fee is \$350.00 and under the Prisoner Litigation  
3 Reform Act the prisoner is required to pay it, even if granted in forma pauperis status, by  
4 way of deductions from his or her prisoner account. In view of this, this case is  
5 DISMISSED without prejudice to petitioner filing a civil rights action if he wishes to do  
6 so in light of the above. However, if Petitioner chooses to file such a complaint, he must  
7 clearly state the nature of his claims and identify against whom his complaints are made.

8 Petitioner's motion to proceed in forma pauperis (docket no. 3) is GRANTED.

9 The Clerk shall close the file and enter judgment.

10 IT IS SO ORDERED.

11 DATED: November 5, 2012

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14 JEFFREY S. WHITE  
15 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JOSE ULYSSESE PADILLA JR,  
Plaintiff,

Case Number: CV12-05117 JSW

**CERTIFICATE OF SERVICE**

v.

US GOVERNMENT et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 5, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Ulysses Padilla  
901 Court Street  
#CC12EJ405  
Martinez, CA 94553

Dated: November 5, 2012



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk